

**IN THE SECOND SESSION OF THE SEVENTH
PARLIAMENT OF THE FOURTH
REPUBLIC OF GHANA**

**REPORT OF THE
COMMITTEE ON COMMUNICATIONS**

ON THE

**AFRICAN UNION CONVENTION ON
CYBER-SECURITY AND PERSONAL DATA
PROTECTION (MALABO CONVENTION)**

PARLIAMENT OF GHANA LIBRARY

REPORT OF THE COMMITTEE ON COMMUNICATIONS ON THE AFRICAN UNION CONVENTION ON CYBER-SECURITY AND PERSONAL DATA PROTECTION (MALABO CONVENTION)

1.0 INTRODUCTION

1.1 The African Union Convention on Cyber-Security and Personal Data Protection was laid in Parliament by the Hon. Minister for Communications, Mrs Ursula Owusu-Ekuful on Tuesday, 10th July, 2018 and referred to the Committee on Communications for consideration and report, pursuant to Order 182 of the Standing Orders of Parliament.

Subsequently, the Committee met with the Hon. Deputy Minister for Communications, Mr. George Nenyi Andah, the National Cyber Security Advisor and other officials from the Ministry of Communications on Tuesday, 24th July 2018 and considered the referral.

The Committee expresses its appreciation to the Hon. Deputy Minister and his team for attending upon the Committee to assist in its deliberations.

2.0 REFERENCE DOCUMENTS

The Committee was guided by the following documents during its deliberations:

- i. The 1992 Constitution of the Republic of Ghana.
- ii. The Standing Orders of Parliament.
- iii. The Electronic Transactions Act, 2008 (Act 772).
- iv. The Data Protection Act, 2012 (Act 842).

3.0 BACKGROUND INFORMATION

African Ministers responsible for Information and Communications Technology per a declaration in 2009, requested the African Union Commission to develop, in conjunction with the United Nations Economic Commission, a framework to regulate electronic transactions, cyber security and personal data protection. Subsequently, the African Union Commission and the United Nations Economic Commission developed the African Union Cyber Security and Personal Data Convention (Malabo Convention), which was adopted in June 2014 by AU Heads of State and Government in Malabo, Equatorial Guinea.

Having regard to the potential benefits in protecting Ghana's cyber space, the Convention was signed by H.E. the President, Nana Addo Dankwa Akufo-Addo at the 29th Ordinary Session of the Assembly of Heads of State and Government of the African Union (AU) in July 2017 in Addis Ababa, Ethiopia.

So far, twelve (12) Member States including Benin, Senegal, Zambia, Sierra Leone, Guinea Bissau and Mauritius have signed the Convention, with only two states ratifying it. However, Article 36 of the Convention requires that at least fifteen AU Member States ratify the convention for it to come into effect.

4.0 **OBJECTIVE OF THE CONVENTION**

The Convention seeks to provide, for Africa, a common platform to promote a credible digital environment, cyber security and protection of citizens' data, through the establishment of minimum standards and procedures for the development of electronic communications and transactions.

5.0 **STRUCTURE OF THE CONVENTION**

The Convention is organised under the following areas:

- i. Electronic Transactions – this covers Articles 2-7 and deals with electronic commerce, contractual obligation in electronic form and security of electronic transactions.
- ii. Personal Data Protection – this section, which is captured under Articles 8-23 focuses on an institutional framework for the protection of personal data, the Data Subjects' Rights and Obligations of the Personal Data Controller.
- iii. Promoting Cyber Security and Combating Cyber Crime - This section encompassing Articles 24-31 provides for Cyber Security measures to be taken at National level, and Criminal provisions.
- iv. The Final Provisions of the Convention relates to various measures to be taken at the level of the African Union

6.0 **OBSERVATIONS AND RECOMMENDATIONS**

6.1 The Committee noted that cybercrime transcends physical boundaries, as perpetrators of such crime could easily operate from outside the affected country. Many African countries have been battling with cyber-related crimes including the use of encryption technology by criminals as a weapon to hold data, belonging to individuals, companies and governments hostage. Unfortunately, most African countries lack the needed structures and capacity to tackle this problem. For instance, the International Telecommunications Union (ITU's) Global Cyber Security Index for 2016, measured Ghana's Cyber Security readiness at 35%. Also, the Report of the United Nations Office on Drugs and Crimes (UNODC) cited Ghana as one of the countries susceptible to cybercrime.

Given the borderless nature of cybercrime, the Committee was of the view that no individual country could single-handedly combat the menace without the co-operation of other countries.

The Convention, the Committee observed, will help build the needed international co-operation and synergies to mitigate the incidence of cybercrime, which has the potential to undermine developmental efforts.

6.2 The Committee underscored the importance of ICT as an indispensable tool for socio-economic development. Today, key sectors of the economy, including Finance, Health, Energy and Education thrive on the effective application of ICT tools in the organisation of government functions and provision of services. In this regard, the Government has initiated various digitalisation programmes such as the Paperless Ports, the National Property Addressing System and E-Justice to formalise the economy.

The above, coupled with the increasing internet penetration and online financial services in the country calls for needed mechanisms to ensure that individuals, businesses and governments are adequately insulated against cyber-related crimes.

6.3 An issue of concern that emerged during consideration of the Convention related to why Ghana was seeking to ratify the Convention at a time when countries such as South Africa and Kenya, with better developed ICT infrastructure have not acceded to the African Union

Convention on Cyber Security and Personal Data Protection, (Malabo Convention), let alone, ratify it.

The Ministry explained that some of the countries that have not signed the Convention are yet to meet the legal framework requirements of cyber security. Fortunately, Ghana already has in place existing legislations on cyber security and personal data protection – (*The Electronic Transactions Act, 2008 (Act 772) which provides for offences against the Confidentiality, Integrity and Availability (CIA) of computer data and systems and the Data Protection Act, 2012 (Act 842), which deals with issues of privacy in the processing of personal information of citizens*). The two legislations were found to be generally consistent with regional and international legislations on cybercrime.

The Committee expressed concern that some of the provisions of the Malabo Convention might conflict with some of our local laws. The Committee therefore underscored the need for the Ministry to collaborate with the Attorney-General to ensure that the Convention is in harmony with our existing legislation.

- 6.4 The Committee observed that Article 34 of the convention makes provision for the amicable settlement of disputes that may arise through direct negotiations between the State and Parties concerned.

It further observed that Article 38 of the Convention provides an exit clause where “any State Party may withdraw from this Convention by giving a written notice one (1) year in advance to the Chairperson of the Commission of the African Union”.

- 6.5 In March 2018, Member States of the African Union adopted the Inter-Continental Trade Agreement in Kigali, Rwanda, to open up trade in Africa. The Committee recognises that given the emergence of e-commerce and digitalisation of various aspects of trade on the continent, the success of the Inter-Continental Trade Agreement will largely depend on the capacity of AU member states to guarantee a cyber-environment that is congenial for trade.

To this end, there is the need for Ghana to foster linkages with the African Union on best practices and initiatives aimed at promoting a safe cyber space.

7.0 CONCLUSION

Undoubtedly, ICT is recognised as the key driver of development, and Ghana, as a developing country, cannot opt out of the ICT Revolution. Whilst government continues to build the needed ICT infrastructure to provide efficient services, catalyse trade and investment, and generate employment, there is the need to ensure that citizens and players in the ICT industry are not unduly exposed to cyber-attacks and related crimes.

The ratification of the Malabo Convention by at least fifteen AU Member States will enable African countries share intelligence information on cyber fraud and unite their efforts to institute standards to make our cyberspace safe for business and investments.


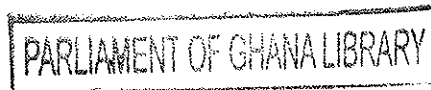
The Convention, once ratified by Parliament will improve Ghana's regional image as a country committed to greater integration of the African continent.

Consequently, the Committee recommends that the House ratify by resolution, the African Union Convention on Cyber Security and Personal Data Protection, in accordance with Article 75(2)(b) of the 1992 Constitution.

Respectfully submitted.



.....
KEN OHENE AGYAPONG (HON)
(CHAIRMAN, COMMITTEE ON
COMMUNICATIONS)



.....
JANET FRIMPONG
(CLERK TO THE COMMITTEE)

July 2018

